

ORDER NO. 5966

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;  
Ashley E. Poling, Vice Chairwoman;  
Mark Acton;  
Ann C. Fisher; and  
Robert G. Taub

Competitive Product Prices  
Inbound EMS 2

Docket No. CP2021-128

ORDER APPROVING CHANGES IN PRICES  
NOT OF GENERAL APPLICABILITY FOR INBOUND EMS 2

(Issued August 20, 2021)

I. INTRODUCTION

The Postal Service requests a change in prices not of general applicability for Inbound EMS 2 effective January 1, 2022.<sup>1</sup> The Commission analyzes the proposed prices pursuant to 39 U.S.C. § 3633. For the reasons discussed below, the Commission approves the Postal Service's request.

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<sup>1</sup> Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, and Application for Non-Public Treatment, August 10, 2021, at 1 (Notice).

## II. BACKGROUND

Inbound EMS 2 covers Express Mail International (EMS) documents and merchandise received from foreign posts for delivery in the Postal Service's domestic delivery area. The Commission approved its addition to the Competitive product list in 2008.<sup>2</sup>

The Postal Service proposes to revise the Inbound EMS 2 prices, effective January 1, 2022. Notice at 1. The Postal Service maintains that the proposed prices are in accordance with the terms of Governors' Decision No. 19-1 and comply with the requirements of 39 U.S.C. § 3633(a)(2). *Id.* at 1-2.

In Order No. 5956, the Commission provided notice of the Postal Service's filing, appointed a Public Representative, and provided the public with an opportunity to comment.<sup>3</sup>

## III. COMMENTS

The Public Representative filed comments on August 18, 2021.<sup>4</sup> Based on his review of the Postal Service's materials, the Public Representative concludes that the proposed prices will continue to generate sufficient revenue to cover costs and thereby satisfy the requirements of 39 U.S.C. § 3633(a). PR Comments at 2. He states that although the Postal Service did not provide detailed calculations of the penalties and revenue lost, the Postal Service correctly applied the penalties using the most recent pre-pandemic data from calendar year (CY) 2019. *Id.* He also states that the Postal

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<sup>2</sup> See Docket Nos. MC2009-10 and CP2009-12, Order Adding Inbound International Expedited Services 2 to Competitive Product List, December 31, 2008 (Order No. 162). Subsequently, the Commission approved the Postal Service's request to change the product name to Inbound EMS 2. See Docket No. CP2013-77, Order Approving Rate and Classification Changes for Inbound International Expedited Services 2, August 30, 2013 (Order No. 1822).

<sup>3</sup> Notice and Order Concerning Changes in Prices for Inbound EMS 2, August 11, 2021 (Order No. 5956).

<sup>4</sup> Public Representative Comments on Postal Service Notice to Change Rates Not of General Applicability for Inbound EMS 2, August 18, 2021 (PR Comments).

Service provided cost coverage scenarios with the minimum and maximum discount applied. *Id.* at 2-3. Therefore, he asserts that, with the maximum discount applied and all penalties included, the proposed prices for Inbound EMS 2 still provide sufficient revenue to cover costs. *Id.* at 3.

#### IV. COMMISSION ANALYSIS

*Proposed Inbound EMS 2 prices.* The Commission reviews price changes for Competitive products in accordance with the requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3035.105. These requirements prohibit the subsidization of Competitive products by Market Dominant products (39 U.S.C. § 3633(a)(1)), require each Competitive product to cover its attributable costs (39 U.S.C. § 3633(a)(2)), and require Competitive products as a whole to cover an appropriate share of institutional costs (39 U.S.C. § 3633(a)(3)).

The Commission has reviewed the Notice, supporting documentation, and the Public Representative's comments in light of the requirements in 39 U.S.C. § 3633(a)(1)-(3). As a result of this review, the Commission finds that the prices presented in the Notice should not lead to the subsidization of Competitive products by Market Dominant products, should cover attributable costs, and should have a positive effect on the contribution that Competitive products make to institutional costs. Thus, the Commission finds that the planned prices for Inbound EMS 2 satisfy the applicable statutory criteria and regulatory requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3035.105. The Commission appreciates the Postal Service's timely submission of its Notice.

*Pay-for-Performance penalties.* Under the EMS Cooperative's annual Pay-for-Performance (PfP) plan,<sup>5</sup> the prices that foreign postal operators pay the Postal Service for the delivery of Inbound EMS 2 are subject to potential penalties based on the Postal Service's service performance. The EMS Cooperative grades the Postal Service's service performance on an annual basis and issues a PfP report card reflecting that evaluation. In Order No. 5660, the Commission directed the Postal Service to continue accounting for year-to-year changes in these penalties in its supporting financial models using the PfP report card, to continue providing detailed explanations of the penalty calculation in future financial workpapers, and to provide the workpapers used to calculate the PfP penalty in the Annual Compliance Reports and price change requests.<sup>6</sup> The Commission further directed the Postal Service to provide a separate list of countries expected to participate in PfP, identify any changes in PfP participation from the previous year, and ensure that the financial workpapers include the most recent information on countries it expects to participate in PfP. *Id.* at 8.

In the instant docket, the Postal Service filed copies of the 2022 PfP plan and the Postal Service's most recent annual PfP report card (for CY 2020). Notice, Attachments 5, 6. The Postal Service notes that because penalties were waived in CY 2020 and for CY 2021, in light of the pandemic, the CY 2019 penalties were used in the workpapers and model. Notice at 3. To show compliance with 39 U.S.C. § 3633, the Postal Service provided a scenario for cost coverage which would provide the maximum discount to all foreign posts. In addition, the Postal Service provided a separate list of countries expected to participate in PfP in CY 2022. *Id.* Attachment 7, Excel file "EMS PfP members 2021 Redacted.xlsx."

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<sup>5</sup> The EMS Cooperative is a voluntary body of the Universal Postal Union (UPU), comprised of designated postal operators of UPU member countries that aims to promote cooperation between members to allow them to provide their customers with a high-quality EMS service on a global basis. The EMS Cooperative administers an annual PfP plan that links payment for EMS delivery to service performance. The CY 2022 PfP plan is the latest available.

<sup>6</sup> Docket No. CP2020-250, Order Approving Changes in Prices Not of General Applicability for Inbound EMS 2, August 28, 2020, at 7 (Order No. 5660).

The Commission finds that even with the maximum discount applied and penalties included, the proposed prices for Inbound EMS 2 satisfy the applicable statutory criteria and regulatory requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3035.105. Accordingly, the proposed prices are approved.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission finds that the proposed Inbound EMS 2 prices, scheduled to take effect January 1, 2022, are in accordance with the relevant statutory and regulatory requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3035.105.
2. The Postal Service shall continue to include in its supporting financial models for all future filings for changes in Inbound EMS 2 prices all Pay-for-Performance penalties incurred in the last calendar year for which Pay-for-Performance report cards are available, even if the effect on cost coverage is small.
3. The Postal Service shall continue to provide a detailed explanation of the penalty calculation in future financial workpapers for changes in prices for Inbound EMS 2, including an explanation of calculations for all estimated lost revenue. The explanation shall explicitly link the penalty calculation to the most recent annual report card and the most recent Pay-for-Performance plan.
4. The Postal Service must provide the workpapers used to calculate the Pay-for-Performance penalty, including all estimated lost revenue, with its Annual Compliance Reports and in future requests to change Inbound EMS 2 prices.
5. The Postal Service shall continue to provide a separate list of countries expected to participate in Pay-for-Performance in the year in which the prices will be in effect, identify any changes in Pay-for-Performance participation from the

previous year, and ensure that the financial workpapers include the most recent information on countries it expects to participate in Pay-for-Performance.

By the Commission.

Erica A. Barker  
Secretary